

1 with any applicable Alternate(s), and establish the applicability of the clause to that part.

(c) Except as prescribed in paragraph (b) of this section, the contracting officer shall insert the clause at FAR 52.248–1 with its Alternate I in initial production contracts for major systems, and major systems R&D contracts for full-scale development, unless the contracting officer determines in writing that its use is inappropriate. Use of Alternate I is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that lend themselves to VE.

(d) The contracting officer shall insert the clause at FAR 52.248–1 with its Alternate II under the conditions prescribed in paragraph (c) of this section

PART 1849—TERMINATION OF CONTRACTS

Subpart 1849.1—General Principles

Sec.

1849.101 Authorities and responsibilities.

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1849.505–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14030, Mar. 25, 1997, unless otherwise noted.

Subpart 1849.1—General Principles

1849.101 Authorities and responsibilities.

1849.101–70 NASA authorities and responsibilities.

(a) Installations shall appoint a termination contracting officer (TCO) (see FAR 2.101) to perform specific duties relating to contract termination as one of that individual's primary functions. In addition to the responsibilities described in this part and FAR part 49, such duties should include—

(1) Reviewing NASA Forms 1412, Termination Authority;

(2) Reviewing the contract and related documents before issuing the notice of termination, to ensure protection of the Government's rights under the contract; and

(3) Issuing notices of termination, reinstatement, and rescission to contractors;

(b) Contracting offices shall utilize the services of the Department of Defense and other Government agencies whenever possible to administer and negotiate settlement of terminated contracts. Delegation of the negotiation of termination settlement function shall be made in accordance with FAR subpart 42.2 and 1842.2.

1849.101–71 Termination authority.

NASA Form 1412, Termination Authority, is prescribed for use by NASA installations when initiating action to terminate a contract for convenience or default. The project manager or the activity initiating the procurement request should initiate the action by completing NASA Form 1412 and submitting it to the contracting officer.

1849.102 Notice of termination.

1849.102–70 Prior clearance of significant contract terminations.

(a) Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through

the Headquarters Office of Legislative Affairs (Code LB) before release of the termination notice, or any information on the proposed termination, to the contractor. Proposed terminations expected to result in a reduction of fewer than 100 should be similarly cleared if the installation believes it to be significant.

(b) The contracting officer shall submit the following information to Code LB, and a copy to the Office of Procurement (Code HS), as soon as possible after the decision to terminate is made. Until clearance is obtained, this information shall be treated as "For Official Use Only" unless the information is classified.

- (1) Contract number.
 - (2) Date of award.
 - (3) Type of award.
 - (4) Name of company.
 - (5) Nature of contract or end item.
 - (6) Reasons for the termination.
 - (7) Contract price of items terminated.
 - (8) Total number of contractor employees involved, including the Government's estimate of the number that may be discharged.
 - (9) Anticipated impact on the company and the community.
 - (10) Name of the community affected.
 - (11) Area labor category.
 - (12) Whether contractor is large or small business.
 - (13) Any known impact on disadvantaged employment programs.
 - (14) Total number of subcontractors involved and the impact in this area, if known.
 - (15) Unclassified draft of suggested press release.
- (c) To minimize termination costs, Code LB shall act promptly on the request and provide a response not later than two working days after receipt of the information in paragraph (b) of this section.

1849.102-71 Prior clearance of contract terminations resulting from a major breach of safety or security.

The Assistant Administrator for Procurement (Code HS) must be notified prior to taking any action to terminate because of a major breach of safety or security.

[65 FR 70316, Nov. 22, 2000]

1849.105 Duties of termination contracting officer after issuance of notice of termination.

1849.105-70 Termination docket checklist.

The termination contracting officer shall complete NASA Form 1413, Termination Docket Checklist.

1849.110 Settlement negotiation memorandum.

1849.110-70 Memorandum contents.

The TCO shall include the following information in the settlement negotiation memorandum. Contractors and subcontractors are encouraged to use this format appropriately modified for subcontract settlements submitted for review and approval.

(a) General information—(1) Identification. (i) Name and address of the contractor and any pertinent affiliation between prime contractors and subcontractors relative to the overall settlement.

(ii) Names and titles of contractor and Government personnel who participated in the negotiation.

(2) Description of terminated contract.

- (i) Contract number;
- (ii) Date of award;
- (iii) Contract type;
- (iv) General description of contract items;
- (v) Total contract price; and
- (vi) Applicable contract termination provisions and clause.

(3) Termination notice.

- (i) Date of the termination notice;
- (ii) Effective date of termination;
- (iii) Scope and nature of termination (complete or partial);
- (iv) Items terminated;
- (v) Unit prices;
- (vi) Total price of items terminated for fixed-price contracts or the estimated cost and fee applicable to items terminated for cost-reimbursement type contracts;

(vii) Whether the termination notice was amended and, if so, why;

(viii) Whether the contractor stopped work on the termination effective date (if it did not, furnish details) and whether subcontracts were terminated promptly;

(ix) Any redirection of common items and return of goods to the contractor's suppliers; and

(x) Extent of contract performance and timely deliveries by the contractor.

(b) Contractor's settlement proposal—(1) Date and amount. Date and location where the claim was filed and its gross amount (if interim settlement proposals were filed, information shall be furnished for each claim).

(2) Basis of claim. E.g., inventory, total cost, or other basis, including an explanation of any approvals granted in connection with submission on other than an inventory basis.

(3) Examination of proposal. Types of reviews made and by whom (audit, engineering, legal, or other).

(c) Tabular summary of contractor's claim and the settlement. The cost elements/items, the amounts claimed, the Government recommended position (including auditor, field, and technical personnel recommendations), and the negotiated settlement amounts. This summary shall include, if appropriate, previously reimbursed and unreimbursed costs applicable to the prime contractor and subcontractor, previous profit/fees paid and unpaid; settlement cost less disposal credit or other credits, and a recapitulation of previous settlements. The summary of the negotiated settlement shall include the amount claimed and allowed for contractor and/or subcontractor changes, disposal, prior payment credits, and contract price.

(d) Settlement narrative summary.

(1) Contractor's cost.

(2) Profit/Fee.

(3) Settlement expenses not included in the audit.

(4) Number and dollar amount of any subcontractor settlements approved by the TCO and concluded by the contractor under delegation of authority.

(5) Total amount of any partial payments.

(6) Total of unliquidated progress or advance payments.

(7) Claims of the Government against the contractor included in settlement agreement reservations.

(8) Assignments, including the name and address of each assignee.

(9) Disposal credits.

(10) Status of plant clearance actions and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations, including a consolidated closing plant clearance report, if applicable.

(11) Status of Government property accountability.

(12) Disposition of any special tooling, if applicable.

(13) Proposed reservations of rights to the Government or to the contractor.

(e) Recommendation. Amount of the gross settlement recommended and TCO statement that it is fair and reasonable to the Government and the contractor.

(f) TCO Signature and date.

1849.111 Review of proposed settlements. (NASA paragraphs (1) and (2))

(1) Settlements shall be reviewed in accordance with center-prescribed procedures.

(2) The TCO may authorize the contract administration office cognizant of a lower-tier subcontractor grant approval or ratification of proposed subcontractor settlements described in FAR 49.108-3(c) that are first reviewed and referred by the prime contractor to the TCO. This procedure is not applicable to settlements between the contractor and its first tier subcontractors.

Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clause.

1849.505-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.249-72, Termination (Utilities), in all solicitations and contracts for utilities services.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

Sec.

1850.202 Contract adjustment boards.